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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN THE MATTER OF

**APPLICATION BY QWEST COMMUNICATIONS
INTERNATIONAL, INC. FOR AUTHORIZATION
TO PROVIDE IN-REGION, INTERLATA
SERVICES IN THE STATES OF COLORADO,
IDAHO, IOWA, NEBRASKA, AND NORTH
DAKOTA.**

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**WRITTEN CONSULTATION OF
THE IDAHO PUBLIC UTILITIES COMMISSION**

On June 13, 2002, Qwest Communications International, Inc. (Qwest) filed a Joint Application for authorization to provide in-region, interLATA service in the states of Colorado, Idaho, Iowa, Nebraska and North Dakota, pursuant to Section 271 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 271. The Federal Communications Commission (FCC) issued its notice the same day requesting written comments and written consultations by state commissions from those states in which Qwest seeks interLATA authority under Section 271. This written consultation is filed by the Idaho Public Utilities Commission (IPUC).

BACKGROUND

Section 271 of the Act establishes the means for a Bell Operating Company (BOC), which includes Qwest, to obtain authorization from the FCC to begin providing in-region interLATA and interstate telecommunication services. In making its determination, the FCC is required to "consult with the state commission of any state that is the subject of the application in order to verify the compliance of the Bell Operating Company with the requirements of [Section 271]." 47 U.S.C. § 271(d)(2)(B). In order to provide a meaningful written consultation, it is necessary for a state to make a record and provide a recommendation regarding the BOC's compliance with Section 271.

**WRITTEN CONSULTATION
OF THE IPUC**

The IPUC has been involved in a case for over two years to establish a record and determine whether Qwest complies with the requirements of Section 271. The case in Idaho was initiated in February 2000 when Qwest filed a Notice of Intention to File a Section 271 application and a Motion for Alternative Procedure to Manage the Section 271 process. By its motion, Qwest asked the IPUC to approve a procedure to permit Qwest to submit a test plan for its operational support system (OSS), and to evaluate alternative approaches for considering each item on the 14-point checklist contained in Section 271.

On July 7, 2000, the IPUC issued Order No. 28439 granting Qwest's motion. The IPUC subsequently issued Procedural Order No. 28450, specifying the IPUC would join with other Qwest service states in a multi-state effort "to conduct a joint process to develop a factual record and consider aspects of Section 271 through collaborative workshops." Thereafter the Section 271 case at the state level proceeded by two separate, multi-state endeavors. One major effort, in which 13 states participated, focused on testing Qwest's OSS by independent entities. The OSS test process was managed by an already existing committee--the Regional Oversight Committee (ROC)--comprised of members from the Qwest local service states. A greater discussion of the OSS test process occurs later in these comments.

For the non-OSS process, the participating state commissions retained an outside facilitator, Liberty Consulting Group, to conduct workshops, establish a record to be filed in each state, and to make recommended findings regarding Qwest's compliance with the Section 271 requirements. The Facilitator was directed to conduct a number workshops, and to "prepare and submit a report on the agreed upon and unresolved issues in each workshop, identify findings of fact and conclusions of law, differing views and resolutions for the disputed issues and recommended findings of disputed issues." IPUC Order No. 28450, p. 2. The IPUC provided an opportunity for parties to file within 10 days of the filing of the Facilitator's reports "any proposed additional or revised findings of fact, conclusions of law or clarification of disputed issues." *Id.* Issues unresolved by the Facilitator were brought to the IPUC by written comments, parties were provided an opportunity to present oral argument on disputed issues, and the Commission issued decisions to resolve the disputed issues and approve the Facilitator's report.

At the direction of the state commissions, the Facilitator conducted several lengthy workshops and filed reports on each of the checklist items contained in Section 271(c)(2)(B), as well as the other requirements included in Section 271. Beginning March 19, 2001, the

Facilitator filed four separate reports, each identifying undisputed and resolved issues, as well as unresolved issues on which the Facilitator made recommendations. After each final report was filed, the IPUC issued a notice soliciting comments and objections on the unresolved issues from Qwest and other interested parties, including the IPUC Staff. The notice notified interested parties that the filing had occurred, and that the IPUC regarded "those issues identified in the report as undisputed as fully resolved through the workshop process." The IPUC also notified interested parties that it would provide an opportunity for oral argument on disputed issues, the first of which convened on September 27, 2001.

IPUC DECISIONS ON NON-OSS SECTION 271 REQUIREMENTS

After receiving the Facilitator's report at the conclusion of the relevant workshops, the written comments of the interested parties, and after hearing oral arguments, the IPUC issued a decision on the subjects covered in the Facilitator's report. The IPUC issued four decisions regarding Qwest's compliance with the Section 271 requirements. The four substantive decisions issued by the IPUC are the following:

1. Qwest's compliance with the 14 item checklist in Section 271 (the Checklist Decision) issued November 21, 2001;
2. Qwest's performance assurance plan issued March 7, 2002 (the QPAP Decision);
3. A decision on public interest, Track A, and Section 272 issued April 19, 2002 (the Public Interest Decision); and
4. The Commission's final decision on Qwest Corporation's compliance with Section 271 issued June 10, 2002 (Final Decision).

Each of the first three IPUC decisions approved the Facilitator's report, discussed and resolved specific disputed issues, and made conditional findings on Qwest's compliance with relevant Section 271 requirements. For example, the Checklist Decision states the IPUC "is prepared, when consulted by the FCC, to report that Qwest satisfies the access and interconnection requirements of the competitive checklist in 47 U.S.C. 271(c)(2)(B), so long as Qwest revises its SGAT [Statement of Generally Available Terms] as set forth in this decision and as may be necessary as this case proceeds to its conclusion." Checklist Decision p. 10. The IPUC in its QPAP Decision said "the QPAP is well on its way to meeting the FCC's zone of reasonableness standard," but the IPUC was "not yet prepared to recommend approval of the

QPAP, however, because changes must still be made.” QPAP Decision p. 9. In its Public Interest Decision, the IPUC conditioned final approval on additional revisions to Qwest’s SGAT and, regarding Section 272 separate affiliate requirements, until supplemental comments were filed by IPUC Staff. Public Interest Decision p. 12.

Following issuance of the IPUC’s third decision, Qwest made a compliance filing on May 24, 2002. The compliance filing addressed all outstanding issues from the first three decisions as well as QPAP issues and the successful completion of the OSS test. The IPUC subsequently issued its Final Decision on June 10, 2002, approving the compliance filing, stating its belief that “Qwest has responded to the directives the [IPUC] stated in its three previous decisions, and has made the necessary changes to its SGAT or otherwise addressed the conditions put forth by the [IPUC].” Final Decision p. 9.

As part of the compliance filing Qwest included in the revised SGAT a new price list for its unbundled network elements (UNEs). Prices for UNEs were an issue in the IPUC’s Public Interest Decision where the IPUC stated it “cannot find Qwest in compliance with public interest standards until UNE prices that satisfy the FCC’s TELRIC standards are established.” Public Interest Decision p. 12. A separate docket currently is underway at the IPUC to establish UNE prices. In the Final Decision, the IPUC stated “the revised UNE prices are reasonable, pending resolution of the cost case, and the [IPUC] will permit them to be effective as of June 10, 2002.” Final Decision p. 7. Accordingly, the IPUC is satisfied with the interim UNE rates filed by Qwest and expects to complete its UNE cost docket to establish permanent TELRIC rates before the end of the year.

Noting in the Final Decision the extended time consumed by the case, the incredible effort and resources committed to it by numerous parties, the IPUC stated it was prepared, “when consulted by the FCC, to advise that the record establishes in this proceeding that Qwest has adequately addressed the Section 271 requirements.” Final Decision p. 9. Rather than further discuss or attempt to summarize in this written consultation the issues reviewed in each of the IPUC’s decisions, the four decisions are attached to this written consultation as Exhibits A, B, C, and D. In addition to more detailed discussion of the disputed issues resolved by the IPUC, the decisions also provide greater detail of the lengthy procedural process involved in the case that consumed more than two years. For more explicit review of particular aspects of the record,

each of the Facilitator's reports is available as part of the record filed with the FCC as part of Qwest's application.

As already noted, the IPUC's four decisions review a record that shows "Qwest has adequately addressed the Section 271 requirements." The decisions themselves, however, also identify issues that deserve additional comment to the FCC. For example, the IPUC participated in a multi-state testing process for Qwest's operational support system (OSS), but did not independently review the test results. The IPUC notified parties it would accept written comments following completion of the draft final OSS test report, and forward those comments as part of its filing with the FCC. In addition, late comments filed by some parties in the IPUC's case identify issues deserving comment from the IPUC as part of its written consultation.

THE OSS TEST PROCESS AND RESULTS

The multi-state OSS testing effort was established and monitored by the Regional Oversight Committee (ROC), a committee comprised of members from state commissions in those states where Qwest provides local service. The ROC created an Executive Committee to retain vendors to administer the test and a Technical Advisory Group (TAG) to oversee the day-to-day test operations. The TAG also provided a forum for participants to design and evaluate the test process, and provided technical assistance in test planning.

In September 1999, the ROC hired Maxim Telecommunications Group Consulting (MTG) to act as the project manager for the third party test. Beginning in late 1999, the TAG held numerous meetings to establish test principles, performance measures, and the documents describing the test. As part of the TAG's efforts, an extensive list of Performance Indicator Definitions (PIDs) was developed, describing the manner in which Qwest's performance would be measured.

In July 2000, the ROC contracted with three additional parties to assist in the test process. KPMG Consulting (KPMG) was retained to serve as the test administrator, Hewlett-Packard was hired to serve as a surrogate CLEC in the testing process, and Liberty Consulting Group was retained to conduct an audit of the PIDs to ensure that Qwest was properly measuring and recording its commercial data.

Staff from the IPUC actively participated in the development and conduct of the regional third party test of Qwest's OSS. Staff actively participated in all the workshops that established the principles and procedures used by the vendors in the conduct of the test, ensuring that the

testing addressed Idaho specific conditions and concerns. The workshop that focused on the development of the Master Test Plan was held in the IPUC hearing room.

During the conduct of the test, IPUC staff actively participated in nearly all ongoing discussions and conference calls. In addition to weekly steering committee and TAG conference calls, IPUC staff participated in weekly project management calls between Qwest and the test vendors, where schedules and other project management issues were discussed. Staff also actively participated in the observation and exception focus calls, initially held weekly, and progressing to daily calls as the testing neared its end. IPUC staff also was involved in nearly every special issue working group that was established to address specific issues, primarily those dealing with the PIDs. Idaho's staff was one of the few from state commissions to participate regularly in daily status calls between the vendors. IPUC staff, along with the Montana Commission staff, were recognized by the test vendors during the final Vendor Technical Conference for their consistent and active participation throughout the test.

Comments were filed by AT&T with the IPUC after its Final Decision, focusing on the issues that remained unresolved at the conclusion of the OSS test. The IPUC's conclusion that Qwest provides nondiscriminatory access to its OSS recognized that while some areas still needed improvement, the overall record demonstrated CLEC's are provided with non-discriminatory access to Qwest's OSS. Previous FCC decisions in Section 271 cases clearly establish that perfect results are not required, but that the OSS access must be viewed in its entirety. The Qwest OSS test vendors concluded that CLEC's overall are provided nondiscriminatory access to Qwest's systems, and the IPUC agrees with this finding. The issues that remain, which individually may be significant, do not negate this overall finding.

The comments filed by AT&T regarding the OSS test results are attached to this written consultation as Exhibit E. The IPUC reviewed the comments in light of the successful conclusion of the OSS test, and also briefly discusses the issues raised by AT&T in the next section of this consultation.

IPUC'S COMMENTS REGARDING UNRESOLVED OSS ISSUES

1. Human Errors in Manual Order Processing.

The testing revealed an unacceptably high level of human errors in the manual processing of orders. Although Qwest implemented additional training and revised documentation to address this problem, the problems persisted in the limited retesting conducted

after the fixes were implemented. Qwest proposed additional monitoring and performance reporting in lieu of additional testing. The Steering Committee asked KPMG to review the adequacy of the additional reporting proposed by Qwest, and its recommendation was contained in the "White Paper" entitled "Qwest Manual Order Entry Performance Indicator Description Adequacy Study". The study proposed an extensive reporting regime to fully identify the scope and nature of any ongoing problems with manually handled orders. In its response to the study, Qwest indicated the reporting proposed in the study was excessive, and proposed an alternative, but committed to working with a multi-state long term PID administration effort to further refine its proposal. The IPUC supports additional reporting and monitoring to address this issue, and is confident the long term Section 271 effort can develop metrics that will adequately measure Qwest's reporting in this area. The IPUC considers this issue a logical addition to the Qwest Performance Assurance Plan (QPAP), and expects that it will be addressed in the initial six-month review of the QPAP.

2. Inaccurate Qwest Reported Performance Data.

The initial test plan envisioned KPMG making a direct comparison between its measured performance for the pseudo-CLEC, and the performance reported by Qwest. Due to differences in timeframes, however, such a comparison was not meaningful. Therefore, KPMG analyzed the actual records Qwest uses to produce its performance reports, comparing the underlying data as recorded by Qwest with the same data as measured by the test. This analysis initially revealed problems with Qwest's underlying data. Qwest implemented changes to its procedures for recording the data, and corrected the results for the historical data. KPMG examined the changes made by Qwest and the corrected results and concluded that the changes resolved the instant concerns. Qwest elected not to conduct further testing, so KPMG was unable to determine whether these changes adequately addressed these issues for future reporting.

AT&T portrayed KPMG's failure to produce the direct comparison between measured and reported performance as a deficiency of the test. KPMG's examination of the underlying data as recorded by Qwest, in combination with the Liberty audit of the procedures used by Qwest to calculate the reports, is a more thorough method of examining this issue than the direct comparison. The combined efforts of KPMG and Liberty provide reasonable assurances that Qwest's performance reporting was accurate at the conclusion of the test.

The continued reliability of Qwest's performance reports is a significant concern, and one the IPUC expects to monitor closely. The inability of the Liberty data reconciliation efforts to fully explain a significant percentage of the discrepancies between Qwest's data and that of participating CLECs supports that concern. While the audit provisions contained in the QPAP provide significant tools for examining this issue, the IPUC supports additional efforts in this area. The IPUC expects the long-term multi-state effort to address this issue.

3. Discriminatory Treatment in the Provision of Jeopardy Notices.

Although the test indicated a failure in this area, the IPUC finds Qwest's explanation that the test results are an anomaly of the test design to be convincing. The orders submitted in the test were all non-dispatch, which have short provisioning timeframes, typically hours instead of days. It is logical that jeopardy notice performance on such orders would not be representative of Qwest's provision of jeopardy notices on all types of orders, including the dispatched orders with multi-day provisioning intervals.

Qwest's wholesale performance report for jeopardy notices indicates Qwest is not consistently meeting a parity performance level for this measure. The performance is sporadic, some months exceeding parity, while others are well below parity. Jeopardy notice performance is an issue that is included in Qwest's Performance Assurance Plan (QPAP), so the IPUC fully expects Qwest to continue to work to improve its performance in this area.

4. Insufficient Capability to Provision Dark Fiber.

The Test relied upon a review of the company's documented processes and observation of commercially placed orders to evaluate dark fiber provisioning. In response to the exceptions raised, Qwest made a number of improvements to its documentation and procedures, and KPMG eventually found the processes to be adequate. Nonetheless, in the few orders that were evaluated after the documentation had been updated, Qwest's technicians failed to adequately follow the documented processes. Qwest responded that it would conduct additional training of its technicians, but because the test was nearing its conclusion and waiting for commercial observations would involve considerable delay, Qwest elected to not have the test vendors verify whether such training had resolved the problems.

Dark fiber orders are infrequent, with no Idaho orders in most months. The reported commercial results are mixed, and while they do not demonstrate parity, they also do not portray major problems. Qwest made significant improvements to its processes, and the IPUC expects

performance in the provisioning of dark fiber to improve. While the IPUC considers this issue to be significant, we do not consider the extent of the problems uncovered by the test to be sufficient to deny a competitor a reasonable opportunity to compete. Dark fiber products are not eligible for QPAP payments at this time. The IPUC will continue to monitor Qwest's performance in this area, and should less than parity performance continue, the IPUC will support the inclusion of dark fiber products in the QPAP at the periodic reviews.

5. Insufficient Capability to Provision Enhanced Extended Links (EELs).

This is similar to the dark fiber issue. Problems with both the documented procedures and compliance with those procedures were uncovered during the test. Qwest made significant improvement to the documented process and resolved those concerns. Qwest technicians again failed to adequately follow the revised procedures when testers observed the few commercial orders that were available during the retest period. Qwest indicated it would provide additional training, but elected not to delay the conclusion of the test to verify that the training had resolved the compliance issues.

As with dark fiber, EEL orders are relatively rare, with no Idaho orders in most months. The reported commercial results are inconclusive. If Qwest technicians were significantly failing to follow documented procedures, one would expect installation quality problems or delayed installations. While the reported results do not show major problems in either area, they fail to eliminate the concerns raised by the test. Qwest made significant improvements to its processes, and the IPUC expects performance in the provisioning of EELs to improve. Although this issue is significant, the extent of the problems uncovered by the test are not sufficient to prevent a reasonable opportunity for a competitor to compete. EELs are not eligible for QPAP payments at this time. The IPUC will continue to monitor Qwest's performance in this area, and should performance indicate continuing problems, the IPUC will support the inclusion of EEL products in the QPAP at the periodic reviews.

6. Lack of Parity in Provisioning Non-Dispatched UNE-P and Business Resale Orders.

The test results indicated Qwest took more time to install the pseudo-CLEC's business resale and UNE-P orders not requiring a dispatch than it did to install the comparable retail product (business POTS). Qwest responded that commercial results demonstrate Qwest is

providing parity for this measure. The IPUC agrees that the regional commercial data supports the Qwest position that parity is being provided for these measures.

7. Inaccurate Disposition Codes for CLEC Trouble Reports.

The test revealed inconsistencies in the codes entered in repair records by Qwest technicians or other personnel. These errors may result in improper treatment of individual repair records in Qwest's performance reports. Qwest made a number of improvements to the documented procedures for coding such reports, and its performance did improve upon retest. However, the results still failed to reach a level deemed acceptable by KPMG. Qwest indicated its performance had improved considerably, that the correct information was usually contained in the narrative field on the report, and that it would conduct additional training and implement tighter review and coaching procedures to ensure errors are kept to a minimum, but elected not to conduct further retesting.

This issue was also raised in the Liberty audit and data reconciliation efforts. It is of particular concern as it may have a significant impact on the inclusion of individual repair records in Qwest's performance reports, and the exclusion of just a few records could have a significant impact on payments made to CLECs under the QPAP. It may also make it possible to mask Qwest's real performance in repairing CLEC related facilities.

Qwest's performance upon retest was not far from the levels established by KPMG for satisfactory performance. The training and monitoring that Qwest proposed, if maintained, may well have raised Qwest's performance above the KPMG level, but that has not been verified. Qwest's wholesale repair performance, as measured by KPMG, is consistent with that reported by Qwest, which tends to indicate the coding errors are not having a significant discriminatory effect on the overall reporting results. While the IPUC supports additional ongoing improvements in this area, the current performance does not appear to prevent a CLEC from having a reasonable opportunity to compete. The IPUC supports the structuring of any audits conducted under the terms of the QPAP to enable further examination of this issue.

8. Inadequate and Unstable Processes for the Production of DUF Reports.

Qwest failed the DUF test five consecutive times, and on the sixth test barely met KPMG's criteria. AT&T maintains that the test failed to demonstrate whether Qwest could consistently provide complete and accurate DUF information. However, the "military style"

testing agreed to by all parties in the ROC test, which requires retesting until passed, is not designed to test ongoing consistency, but to provide a status of the performance at the time the test is conducted. At the time the test concluded, Qwest's performance met the criteria required to satisfy this issue. In addition, The IPUC understands that the process improvements implemented by Qwest that enabled it to pass the sixth test were improvements to its systems, primarily software fixes. Such improvements are not typically temporary in nature, but remain in place until circumstances change.

The QPAP is the tool that is designed to ensure Qwest maintains consistent performance. The BI-1 measure addresses the timeliness of DUF records provided to CLEC, which is part of the issues identified by the DUF testing results. BI-1 is a measure currently included in the QPAP. If the evidence indicates Qwest fails to maintain the quality and completeness of DUF records, the IPUC will support the development and addition to the QPAP of a PID addressing DUF accuracy and completeness.

Many of the improvements Qwest implemented to improve its performance consisted of additional training or coaching of existing personnel. This kind of fix requires constant attention for the improvements to be maintained. With the fiscal pressure imposed by the current downturn in the technology area, the IPUC is concerned that these improvements will not be maintained. Qwest has already announced that significant additional reductions in staff will be implemented, which will place even greater burdens on limited resources. Without the visibility and pressure of the Section 271 approval process, the priority of such improvements may be difficult to maintain. The IPUC will continue to monitor Qwest's performance and if evidence reveals problems due to a lack of adequate trained staff, the IPUC will seek to address such problems in the periodic reviews contained in the QPAP.

9. Change Management.

Qwest initiated an extensive overhaul of its change management procedures (CMP) shortly after the testing began. The test vendors were able to determine that the proposed structure and procedures of the revised CMP satisfied the criteria established for those processes, but were unable to verify whether Qwest "adhered to this process over time". CLEC comments basically focus on the lack of experience with the new procedures. Qwest indicates the procedures were implemented as developed, and that some experience exists with much of the revised CMP.

The development of the revised procedures and implementation of those aspects of the revised CMP that have been used demonstrate substantial progress by Qwest in meeting this requirement. While adherence to the process over time has not been demonstrated for a full point release of the OSS software, there is a record of following individual elements of the process as agreement was reached on each element. While this record is not as lengthy or perfect as desired, it is substantial, and perfection is not required.

One measure contained in the QPAP, PO-16, Timely Release Notifications, relates to an important element of the CMP. This measure will provide substantial information about Qwest's continued performance at following some of the procedures identified in the revised CMP, and the related financial penalties for noncompliance should minimize such instances.

The IPUC will continue to monitor implementation of the CMP process. Should Qwest fail to follow the revised CMP procedures, the IPUC will support corrective action, such as the development and inclusion into the QPAP of applicable PIDs.

The OSS Final Report also faulted Qwest for failing to provide support for all of its interfaces in its Stand Alone Test Environment (SATE). While Qwest has provided a separate test environment for most of the functions a CLEC would use, a few functions must be tested using the actual production system rather than a separate test environment. Qwest maintains experience has demonstrated that this is an adequate overall solution. The IPUC will continue to monitor this issue as well, and if experience demonstrates the use of the production environment for these limited functions causes problems, the IPUC will consider appropriate remedies.

The IPUC will continue to monitor Qwest's efforts to address OSS issues and believes monitoring can best be accomplished through participation in an ongoing multi-state collaborative effort, similar to the process that conducted the regional OSS test. IPUC staff has participated in an initial workshop and a number of conference calls in an effort to define and implement such a collaboration. While a number of issues remain to be resolved, the IPUC is confident a multi-state, long term Section 271 effort will be conducted. The IPUC expects to participate in such an effort and to use this effort to continue to address unresolved issues, as well as any that arise as competition develops.

ADDITIONAL QPAP COMMENTS

Additional late comments were filed with the IPUC by AT&T regarding changes to Qwest's QPAP, and Qwest filed a written response. The IPUC reviewed AT&T's comments and Qwest's response. AT&T claims the QPAP language in Section 13.6 is unclear regarding a CLEC's ability to recover damages in addition to those provided for in the QPAP. Qwest responded that the language does not preclude recovery of non-contractual remedies, except where those remedies duplicate remedies available under a contractual claim. The IPUC is satisfied that the language in the QPAP is consistent with the IPUC's decision.

AT&T also objected to the language in section 16.1, which AT&T claims limits the ability of the IPUC to make changes to the Plan. Qwest responded that the language merely preserves "the ordinary rights of judicial review that may be available with respect to any order of the Commission." The IPUC does not believe the section limits the ability of the IPUC to make changes to the Plan beyond those legal limits that already exist and apply to any Commission order.

OTHER ISSUES

The Commission in its Final Decision briefly discussed allegations raised by Touch America regarding Qwest's contracts with third parties to provide lit fiber on an exclusive basis to specific large customers. Some or all of these agreements were not disclosed in that they were not filed with state commissions as interconnection agreements, nor apparently did Qwest make the same terms available to competitor providers. Whether the agreements are in fact interconnection agreements that must be filed, and whether they provide for unlawful discriminatory treatment of competitors, are issues currently before the FCC in filings made by Touch America. Facts were not brought to the IPUC regarding the agreements to justify an independent investigation in Idaho, so the IPUC offers no substantive comment.

CONCLUSION

Clearly, with the vast numbers of issues in the extensive record created during the past two years on Qwest's compliance with the Section 271 requirements, it is possible to find less than perfect compliance by Qwest. The IPUC will continue to monitor Qwest's record if it receives interLATA approval from the FCC, and will require changes to Qwest's performance

assurance plan if changes are necessary to ensure competitors have a fair opportunity to thrive in Idaho. The IPUC generally is pleased with the record in its case, and with the effort of all who participated. The IPUC recommends the FCC approve Qwest's application for interLATA authority pursuant to Section 271.

Respectfully submitted this 3rd day of July 2002.



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EXHIBIT A

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF U S WEST)	CASE NO. USW-T-00-3
COMMUNICATIONS, INC.'S MOTION FOR)	
AN ALTERNATIVE PROCEDURE TO)	COMMISSION DECISION
MANAGE ITS SECTION 271 APPLICATION.)	REGARDING QWEST
)	CORPORATION'S COM-
)	PLIANCE WITH 47 U.S.C. § 271
)	CHECKLIST

On February 8, 2000, Qwest Corporation, known then as U S WEST Communications, Inc., filed a Notice of Intention to File a Section 271 Application and a Motion for Alternative Procedure to Manage the Section 271 process. Section 271 of the Telecommunications Act of 1996, 47 U.S.C. § 271, establishes the means for a Bell Operating Company (BOC), which includes Qwest, to obtain authorization to begin providing in-region interLATA and interstate telecommunications services. A BOC may enter the interLATA long-distance market once the Federal Communications Commission (FCC) determines the BOC satisfies the requirements of Section 271. In making its determination, the FCC is required to "consult with the state commission of any state that is the subject of the Application in order to verify the compliance of the Bell Operating Company with the requirements of [Section 271]." 47 U.S.C. § 271(d)(2)(B). Thus it is left to each state to make a record and provide a recommendation regarding a BOC's compliance with Section 271.

Section 271(c)(2)(B) contains a checklist of 14 items relating to access and interconnection that a BOC must meet in each state where it provides local service. Titled "competitive checklist," the 14 checklist items set forth broadly stated requirements or categories for access and interconnection, each of which gives rise to hundreds of issues for resolution. In addition to satisfying the requirements of the competitive checklist, a BOC must satisfy other components of Section 271. For example, Section 271(c)(1) requires a BOC to provide access and interconnection to its network facilities pursuant to approved interconnection agreements (Track A), or to provide terms for access and interconnection in a statement of generally available terms (SGAT) by which a competitive provider may gain access to the BOC's network and facilities (Track B). The FCC must also determine that the BOC's entry into the interLATA

of the Mountain States, and the Commission Staff. Pursuant to the Commission's instructions, each report set forth all issues resolved by the parties through the workshop process, and identified those issues remaining in dispute regarding the relevant checklist items. Each report also included the facilitator's recommended solution for the disputed issues.

The Commission issued a Notice after each report was filed to notify interested parties that the filing had occurred, and that the Commission regarded "those issues identified in the report as undisputed as fully resolved through the workshop process." The Commission also notified the parties that it would schedule an oral argument on disputed issues. Beginning with its Notice issued June 8, 2001, the Commission notified the parties of the planned oral arguments, and by a Notice issued September 6, 2001, the Commission provided notice that the first oral argument addressing the disputed issues on the 14 checklist items would be held on September 27, 2001. The Commission convened the hearing for oral argument as set forth in its Notice. Only Qwest and the Commission Staff appeared at the oral argument on September 27, 2001.

The Reports filed by the facilitator and the oral arguments heard on September 27 relate only to the 14 checklist items in Section 271(c)(2)(B). The checklist items were addressed in the context of Qwest's SGAT, and so the focus of the workshops was the SGAT terms required to comply with the checklist items. Qwest accordingly has filed the SGAT with the reports showing the terms as they were developed through the workshops and subsequent reports. When completed, the approved SGAT will satisfy the Track B requirements, 47 U.S.C. 271(c)(1)(B).

Other reports filed or to be filed by the facilitator will address the public interest issues, the Track A requirements and the separate subsidiary requirement of Section 272. Included in the public interest issues will be evidence on whether Qwest has made its operational support system (OSS) amenable to competitors' needs, and on a quality performance assurance plan (QPAP) requiring Qwest to meet specific service standards for competitor providers. The Commission will entertain oral argument on the public interest issues, Track A, separate subsidiary requirements, the results of the OSS tests, and Qwest's QPAP, at a later date.

THE FACILITATOR'S REPORTS ON THE CHECKLIST ITEMS

Each of the reports filed by the facilitator is lengthy, containing a description of each issue resolved during the workshops and each issue remaining in dispute. For every disputed issue the facilitator stated the arguments and the evidence of the parties and recommended a resolution for the dispute. The number of disputed issues was reduced significantly, however, through written comments submitted by the parties after each report was filed with the Commission. In its comments Qwest stated its willingness to accept the facilitator's recommendation on most of the disputed items.

The facilitator's resolution for each resolved issue reflects careful consideration of the record and applicable regulations and laws, and the Commission need not discuss the issues resolved by the facilitator and agreed to by the parties. Instead, as with the issues resolved through the workshops, the Commission approves the resolution provided by the facilitator and regards as fully resolved those issues on which Qwest agreed to implement the facilitator's recommendation. On those issues, Qwest must implement the resolution precisely as stated by the facilitator.

As the result of Qwest's acquiescence to most of the facilitator's recommendations, and the absence of AT&T and other CLECs at the oral argument, very few issues remain for the Commission to resolve. Checklist Item No. 1 deals with interconnection and collocation issues. In his May 15, 2001 report, the facilitator identified 40 interconnection issues and 54 collocation issues resolved through the workshops. The facilitator recommended resolution for 12 remaining interconnection issues and 15 collocation issues that remain in dispute. After written comments were filed, however, the number of disputed issues was significantly reduced. During the oral argument, Qwest stated it was prepared to accept what the facilitator recommended in regard to interconnection issues, except for "one area of dispute and one area of clarification." Tr. p. 71.

Qwest identified the first area of dispute as Issue No. 6 in the facilitator's report under Checklist Item No. 1—interconnection--identified as Direct Trunked Transport in Excess of 50 Miles in Length. The issue arises in regard to Qwest's obligation to construct facilities to enable competitive carriers to connect to Qwest's facilities. Qwest's proposed language for its SGAT to limit its obligation to provide direct trunked transport to 50 miles in length. The

facilitator recommended the language not be included in the SGAT because Qwest "did not provide evidence to support a conclusion that it would not be able to recover the costs of longer trunks."

In its written comments and at the oral argument, Qwest modified its requested language to provide for a dispute resolution in the event Qwest was asked to provide direct trunked transport in excess of 50 miles and the parties could not agree on cost sharing. In that event, Qwest asked that the parties bring the matter to the Commission for resolution. Tr. p. 71. Staff supported Qwest's proposal to alter the facilitator's recommended solution. Tr. p. 78.

The Commission will approve the SGAT language recommended by Qwest regarding direct trunked transport in excess of 50 miles. While the facilitator is correct in regarding it as a cost issue, it is reasonable to provide a means for resolution in the event the parties do not agree on sharing costs. Qwest may add the modification to its SGAT at Section 7.2.2.1.5 as set forth on page 11 of Qwest's comments filed with the Commission on May 25, 2001.

Another issue of dispute arose as issue No. 9 under interconnection in the facilitator's May 15, 2001 Report, identified as Interconnection at Qwest Access Tandem Switches. As initially proposed by Qwest, its SGAT Section 7.2.2.9.6 would have precluded interconnection at access tandem switches, allowing interconnection only at local tandem and end office switches. Qwest subsequently withdrew its opposition to interconnection at access tandem switches, and the facilitator's report reflects the change. However, Qwest asked the Commission to approve what Qwest refers to as the 512 CCS rule. According to Qwest, 512 CCS (centum call seconds) is the equivalent traffic of a DS-1. The 512 CCS rule in Qwest's SGAT would require a CLEC to move its traffic away from the access tandem to a direct trunk if traffic volume reaches the 512 CCS level. According to Qwest, the CLECs do not oppose the 512 CCS rule and no comments in opposition were filed with the Commission. The Commission therefore approves this clarification to Qwest's SGAT language.

The only other issue Qwest identified as disputed in regard to Checklist Item No. 1 is identified as Disputed Issue No. 14, Collocation Intervals, under collocation in the facilitator's May 15, 2001 Report. Collocation intervals are the time allowed Qwest to complete a particular request for collocation after receiving the request. The facilitator approved SGAT language

requiring a CLEC when requesting physical collocation to provide a forecast of anticipated collocation needs only if infrastructure modifications are required to be entitled to 90-day collocation interval. Qwest argued that a CLEC should be required to provide a forecast when requesting physical collocation, even when major construction is not required, to obtain the 90-day interval. Qwest contends its position is consistent with FCC orders addressing collocation intervals. Citing FCC standards allowing up to 150 days for collocation applications without forecasts, Qwest asserts the provisioning intervals “in its SGAT are either specifically approved or even more generous to CLECs than required by the FCC.” Qwest Comments, p. 15.

The Commission approves this proposal by Qwest to modify its SGAT language to allow a provisioning interval of up to 120 days for collocation where no forecast is provided by the CLEC. Qwest’s proposed intervals are within the collocation provisioning intervals allowed by the FCC, and no argument was presented to this Commission for creating a more stringent requirement. No other issues were raised by the parties, either in written comments or during the oral argument, regarding Checklist Item No. 1, Interconnection and Collocation.

Only one issue was raised by Qwest in regard to Checklist Item No. 2, Access to Network Elements. During the oral argument, Qwest indicated a section of its SGAT relating to OSS testing was misnumbered and provided the correct number for the section. In addition, Qwest informed the Commission that since the date it and AT&T had filed written comments, the parties had negotiated new language for Section 12.2.9.3 of its SGAT, and that Qwest had included the agreed upon language in its most recent SGAT filing. The Commission approves these adjustments to the Checklist Item No. 2 issues.

AT&T in its written comments presented an argument regarding Checklist Item No. 2. AT&T argues that, because the 1996 Telecommunications Act and FCC rules require an ILEC to provide access to unbundled network elements on the same terms as it provides them to itself, it follows that “Qwest must *build* UNEs for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates.” AT&T Comments p.2. This argument was presented to and considered by the facilitator, and AT&T’s comments recognize the FCC has not interpreted the Act as broadly as AT&T requests. The Commission believes this issue was carefully and properly considered by the facilitator.

The SGAT language approved by the facilitator appropriately states Qwest's obligation to provide access by competitor providers to its UNEs.

In regard to Checklist Item No. 3, Access to Poles, Ducts, Conduits, and Rights of Way, only AT&T filed an exception to the recommendations for resolution of disputed issues provided by the facilitator. In its comments, AT&T contends the SGAT recommended by the facilitator does not go far enough to "explain the test options available to the CLEC to test Qwest and its OSS interfaces." AT&T Comments p. 13. The Facilitator recommended SGAT language stating that a "CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs." The Commission is satisfied the facilitator adequately addressed this issue, keeping in mind that Qwest's OSS is currently being put through a rigorous test process, and the Company will be subject to significant penalties for inadequate service through its QPAP. Should the results of the OSS test demonstrate a need to provide for ongoing test requirements, the Commission may revisit the SGAT on this issue. The Commission regards all issues in regard to Checklist Item No. 3 to be resolved.

Issues regarding Checklist Item No. 4, Access to Unbundled Local Loops, were addressed in the June 11, 2001 Report and the August 20, 2001 Report filed by the facilitator. During the oral argument, Qwest indicated it had not taken any issue with the recommendations made by the facilitator and would submit its SGAT with the language to conform to the facilitator's recommendations. Tr. p. 94. Staff did raise an issue under Issue No. 1, Standard Loop Provisioning Intervals, under Checklist Item 4. Noting the Qwest SGAT language allowed it 24 hours to make repairs and restore service, Staff stated the Commission's Customer Relations Rules require a local exchange provider to restore service to customers in 24 hours. To allow time for a CLEC to make repairs within the required time, Staff suggested it may be "appropriate for the Qwest SGAT in Idaho to provide for restoration of service in less than 24 hours, if necessary, to satisfy the Commission's Customer Relations Rules." Tr. p. 96. AT&T also argued in its comments that "to the extent that the standard interval proposed by Qwest impairs the CLEC's ability to meet any retail service quality standards imposed on the CLEC by state commissions, Qwest's standard is improper." AT&T Comments p. 28.

In response, Qwest stated that its retail repair intervals will be tracked as part of the OSS tests, and would also be part of the service performance standards included in its QPAP.

Qwest also argued that in most circumstances the repair by Qwest would restore service provided by the CLEC to the customer.

The Commission is satisfied that the SGAT language proposed by the facilitator is appropriate. Repair intervals will be tracked pursuant to the OSS testing and the QPAP. If significant problems arise in regard to restoring service to customers within 24 hours, or in regard to other service intervals Qwest provides to a CLEC, the Commission can review those issues as they arise in particular circumstances.

AT&T also raised several other issues regarding Checklist Item No. 4. The remaining Checklist Item No. 4 issues are identified by AT&T as (1) Spectrum Compatibility, (2) Conditioning Charge Refund, (3) Pre-Order Mechanized Loop Testing, (4) Access to LFACs and Other Loop Information Databases, (5) Line Splitting, (6) NIDs [Network Interface Device]. The Commission has reviewed AT&T's arguments on these issues, and the recommendations of the facilitator. In general the Commission is satisfied that the facilitator determined fair and appropriate resolutions of these issues, carefully considering the arguments in light of applicable laws and FCC rules. The Commission also notes, however, that the SGAT is an evolving document, and that changes may be appropriate in the future. For example, although the Commission is satisfied the SGAT language accommodates the FCC's definition of the NID and provides for access to it, the FCC may take a different view of the issue when Qwest's 271 application is before it. In that event, Qwest will be required to change its SGAT language in response to decisions rendered by the FCC.

In regard to Checklist Item Nos. 5 through 14, Qwest stated it would comply with the dispute resolutions provided by the facilitator on each item. Tr. pp. 99-101. Staff also raised no additional issues in regard to these Checklist Item requirements. AT&T in its filed comments did discuss issues regarding Checklist Item Nos. 5, 6, 7, 8, 11 and 13.

The first disputed issue AT&T identifies under Checklist Item No. 5—Unbundled Local Transport—is EUDIT/UDIT distinction. The FCC has determined dedicated transport to be a network element, and Qwest divides it into Unbundled Dedicated Interoffice Transport (UDIT) and Extended Unbundled Dedicated Interoffice Transport (EUDIT). As distinguished by Qwest, UDIT is a distance-sensitive flat-rated element, while EUDIT is flat-rated, non-distance sensitive. AT&T contends "the entire dedicated transport link from point A to point Z should be

based on a distance sensitive, flat rate charge.” AT&T Comments, p. 61. According to AT&T, the facilitator reduced the issue to a simple cost issue and concluded this is not the right forum for determining whether flat-rate pricing for EUDIT is appropriate. The Commission agrees with the facilitator. The facilitator’s task included ensuring that Qwest’s SGAT language is consistent with requirements set forth by the FCC, and the Commission is satisfied the SGAT language on this issue comports with current FCC requirements. The Commission notes that a UNE cost docket currently is open before this Commission and that AT&T is a party in that case. AT&T can and should present its EUDIT cost arguments in that proceeding.

In the remaining issues under Checklist Item No. 5, AT&T asks the Commission to direct wording changes to the SGAT, the first on Disputed Issue No. 2—Connecting UNEs to Finished Services, the second on Disputed Issue No. 3—Waiver of Termination Liability Assessments (TLAs). The Commission has reviewed the suggested wording changes, as well as the facilitator’s reasoning in proposing the language on these sections. The Commission is satisfied the facilitator considered AT&T’s arguments and proposed SGAT language that is consistent with current requirements of the FCC.

AT&T identified one disputed issue regarding Checklist Item No. 6, Unbundled Switching, disputed issue No. 2 in the facilitator’s August 20, 2001 report. The FCC has determined that unbundled local switching is a UNE that ILECs must make available, with one exception. The exception occurs where “incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as enhanced extended link (“EEL”), requesting carriers are not impaired without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (“MSAs”). AT&T Comments, p. 67, quoting *FCC Local Competition Order*, paragraphs 253 and 278. AT&T contends “Qwest is not in compliance with checklist item 6 if Qwest does not make unbundled switching available if an EEL is not available.” AT&T Comments, p. 69. AT&T does not demonstrate that the applicable SGAT language is inconsistent with FCC requirements, or point to evidence in the record to show that the EEL exception is applicable in Idaho. The Commission is satisfied with the facilitator’s report on this issue.